

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
	)	
	)	
<b>Defendant.</b>	)	

**ePLUS, INC.’S MOTION TO STRIKE PORTIONS OF  
LAWSON’S EXPERT REPORT AND EXCLUDE FROM THE CONTEMPT HEARING  
IMPROPER OPINIONS  
AND FOR EXPEDITED BRIEFING**

Plaintiff, ePlus, Inc. (“ePlus”), by counsel, respectfully requests that the Court strike portions of Defendant Lawson Software, Inc.’s (“Lawson”) Rebuttal Expert Report of Benjamin F. Goldberg, Ph.D. Concerning Defendant’s Alleged Contempt of the Court’s Permanent Injunction, in which Dr. Goldberg oversteps the proper bounds for his report.

The report fails to conform to law and the Court’s orders in at least six ways. First, Dr. Goldberg re-argues the Court’s claim construction by offering his own constructions that contradict the Court’s preexisting constructions or import additional limitations into the Court’s constructions. Second, he improperly reargues infringement and invalidity issues which the jury either decided against at trial or never reached. Third, he introduces new theories and evidence for avoiding a finding of contempt that Lawson failed to disclose in its Court-ordered response to ePlus’s discovery requests. Fourth, he seeks to dictate to the Court the applicable law in

evaluating the contempt proceedings. Fifth, he repeatedly mischaracterizes and misuses expert testimony at trial from *ePlus*'s experts. And sixth, Dr. Goldberg relies on non-evidentiary attorney argument from trial to support his claim that the alleged design around is more than colorably different than the adjudicated infringing software configurations. These attempts to propound new claim constructions, to reargue settled issues, and to proffer legal opinions are not permitted under the Federal Rules of Civil Procedure, under this Court's prior orders and under settled case law in this circuit and in the Federal Circuit.

For at least these reasons, *ePlus* respectfully requests that the Court strike all improper opinions and contentions from Dr. Goldberg's report and preclude Defendant from presenting any related evidence, testimony, or argument at the hearing.

Counsel for *ePlus* certifies that it has met telephonically with counsel for Lawson and that a good faith effort has been made between counsel to resolve the matters at issue.

*ePlus* also requests that the Court order expedited briefing of this motion. The contempt hearing is scheduled to begin on February 27, less than three weeks from now. In the meantime, the parties must take expert depositions and prepare the mandatory pre-hearing disclosures, including exhibit lists. Because of the impact this Motion will have on the parties' preparation for the hearing, *ePlus* respectfully requests that the Court resolve this motion as soon as possible. *ePlus* therefore requests that the Court order that Lawson's opposition brief be due on Tuesday, February 14, and that *ePlus*'s reply brief be due on Friday, February 17.

February 7, 2012

Respectfully submitted,

ePLUS, INC.

By Counsel

/s/

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